D&H Demolition, LLC *and* Construction and Master Laborers' Local Union 11 a/w Laborers' International Union of North America. Cases 05–CA–233552 and 05–CA–233564

November 15, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND EMANUEL

This is a refusal-to-bargain case in which the Respondent, D&H Demolition, LLC, is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to charges filed on December 21, 2018,[1] by Construction and Master Laborers' Local Union 11 a/w Laborers' International Union of North America (the Union), the General Counsel issued the consolidated complaint (complaint) on February 22, 2019, and an amendment to the complaint on April 4, 2019, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it and to furnish relevant and necessary information following the Union's certification in Case 05–RC–183865. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and an amended answer to the complaint, and an answer to the amendment to the complaint, admitting in part and denying in part the allegations in the complaint, as amended.

On April 29, 2019, the General Counsel filed a Motion for Summary Judgment. On May 2, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish requested information but contests the validity of the certification based on its contention, raised and rejected in the underlying representation proceeding, that the Acting Regional Director improperly overruled the challenge to Carlos Lara's ballot by finding him eligible to vote under the *Steiny/Daniel*[2] eligibility formula. In addition, the Respondent denies that the information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Respondent's refusal to furnish the Union with requested information. The complaint alleges, and the Respondent admits, that by letter dated December 10, 2018, the Union requested the following information:

> 1. Any written job descriptions for the positions within the bargaining unit.
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> 2. Any written training materials related to the positions within the bargaining unit.
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> 3. A copy of all employee policies, handbooks, manuals, safety guidelines, or written work rules currently applicable to bargaining unit employees.
>
> 4. Any documents that set out the regular work hours for employees within the bargaining unit.
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> 5. A roster of all full-time and regular part-time bargaining unit employees, including all employees listed on the Voter Eligibility List that the [Respondent] submitted in Case No. 05–RC–183865, that includes their date of hire and current or most recent rate of pay.
>
> 6. A copy of the summary plan description and summary of benefits for any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate.
>
> 7. A statement of the monthly premium that a bargaining unit employee is responsible for paying either self-only or family coverage by any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate.

[1] The General Counsel, in his motion for summary judgment at par. 16, inadvertently stated that the charge in Case 05–CA–233564 was filed on December 21, 2019.

[2] *Steiny & Co.*, 308 NLRB 1323 (1992); *Daniel Construction*, 133 NLRB 264 (1961), as modified at 167 NLRB 1078 (1967).

> 8. A statement of the monthly premium that the employer is responsible for paying for an employee with self-only or family coverage by any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate.
>
> 9. A copy of the summary plan descriptions for any 401(k) or other form of retirement benefit plan(s) for which bargaining unit employees are eligible to participate.
>
> 10. A description of any other benefits that the [Respondent] provides to employees, including but not limited to paid vacation, sick days, or holidays, uniforms, gloves, personal protective equipment, access to cleaning products, and job training.

It is well established that the foregoing type of information concerning the terms and conditions of employment of unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request.[3] See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2003). The Respondent has not asserted any basis for rebutting the presumptive relevance of this information. We find, therefore, that the Respondent unlawfully refused to furnish the information sought by the Union. See, e.g., *NP Sunset LLC d/b/a Sunset Station Hotel Casino*, 367 NLRB No. 62, slip op. at 1–2 (2019)*; CVS Albany, LLC, d/b/a CVS*, 364 NLRB No. 122, slip op. at 1 (2016), enfd. mem. 709 F. App'x 10 (D.C. Cir. 2017) (per curiam); *Metro Health Foundation*, supra.

Accordingly, we grant the Motion for Summary Judgment.[4]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and principal place of business in Glen Burnie, Maryland (the Respondent's facility), and has been engaged in the business of performing demolition and asbestos removal.

During the 12-month period ending January 31, 2019, the Respondent, in conducting its operations described above, purchased and received at its facility goods valued in excess of $50,000 from other enterprises located within the State of Maryland, each of which other enterprises had received these goods directly from points outside the State of Maryland.

During the 12-month period ending January 31, 2019, the Respondent has conducted its business operations described above in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act,[5] and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the re-run representation election held by mail ballot from February 14 through March 7, 2018, the Union was certified on September 18, 2018,[6] as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the

[3] Although item 10 in the Union's request for information does not specifically state that it is limited to unit employees, the Union's December 10 letter states that it is seeking the requested documents "insofar as responsive materials relate to the bargaining unit of employees for whom [the Union] is the certified exclusive representative . . .." Accordingly, we view the context of the December 10 letter as clarifying that item 10 pertains to unit employees. In any event, the Board will construe a request that seeks information that is otherwise presumptively relevant as pertaining to unit employees, even though the information requested is not consistently described in those specific terms. See, e.g., *NP Sunset LLC d/b/a Sunset Station Hotel Casino*, 367 NLRB No. 62, slip op. at 2, fn. 2 (2019); *DIRECTV U.S. DIRECTV Holdings LLC,* 361 NLRB No. 124, slip op. at 2 (2014) (not recorded in Board volumes); *Freyco Trucking, Inc.*, 338 NLRB 774, 775 fn. 1 (2003) (request for "copy of all payroll records" construed as pertaining to unit employees, even though request not described in those specific terms).

[4] In view of our decision on the Motion for Summary Judgment, we find it unnecessary to pass on the General Counsel's request that we strike or disregard the denials set forth in pars. 6, 9, 11, and 12 of the Respondent's amended answer to the complaint.

[5] The Respondent in its answer to the amendment to the complaint neither admits nor denies the conclusory allegations in par. 2(d) of the amendment, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. However, the Respondent's answer to the amendment to the complaint admits the underlying factual allegations that, during the 12-month period ending January 31, 2019, the Respondent purchased and received at its facility goods valued in excess of $50,000 from other enterprises located within the State of Maryland, each of which other enterprises had received these goods directly from points outside the State of Maryland; and that the Respondent has conducted its business operations in Washington, D.C., over which the Board asserts plenary jurisdiction. These admissions are sufficient to establish that the Respondent is engaged in commerce. See *Siemons Mailing Service*, 122 NLRB 81 (1958). Further, in the underlying representation proceeding, the Respondent stipulated that it is an employer engaged in commerce within the meaning of the Act. Accordingly, we find that the Respondent's failure to either admit or deny this allegation does not raise any issue warranting a hearing. See, e.g., *Spruce Co*., 321 NLRB 919 fn. 2 (1996), and cases cited there.

[6] By unpublished order dated January 9, 2019, the Board denied the Respondent's request for review of the Acting Regional Director's Decision and Direction on Challenges.

> Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area; excluding employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

About December 10, 2018, the Union, by letter, requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about December 11, 2018, the Respondent has failed and refused to recognize and bargain with the Union.[7]

By the same letter dated December 10, 2018, the Union requested that the Respondent furnish it with the information described above that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about December 11, 2018, the Respondent has failed and refused to provide the requested information.

We find that these failures and refusals constitute an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since December 11, 2018, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit and to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the Respondent's unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union with the information it requested on December 10, 2018.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); accord *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).[8]

ORDER

The National Labor Relations Board orders that the Respondent, D&H Demolition, LLC, Glen Burnie, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Construction and Master Laborers' Local Union 11 a/w Laborers' International Union of North America as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in

[7] In its amended answer, the Respondent denies the complaint allegation that an unnamed agent held the position of the Respondent's counsel and has been an agent of the Respondent within the meaning of Sec. 2(13) of the Act. The Respondent's denials do not preclude summary judgment or raise material issues of fact warranting a hearing because the Respondent admits in pars. 8 and 9 of its amended answer that it notified the Union in writing that it refused to bargain with the Union, and that since December 11, 2018, it has refused to recognize and bargain with the Union.

[8] In accordance with the General Counsel's unopposed request, and as the record in the underlying representation proceeding indicates that the notices of election were posted in both English and Spanish, we shall order the Notice to Employees to be posted in both English and Spanish.

Maryland within the District of Columbia metropolitan area; excluding employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

(b) Furnish to the Union in a timely manner the information requested by the Union on December 10, 2018.

(c) Within 14 days after service by the Region, post at its Glen Burnie, Maryland facility copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be translated into Spanish, and both Spanish and English notices shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 11, 2018.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 15, 2019

John F. Ring, Chairman

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Construction and Master Laborers' Local Union 11 a/w Laborers' International Union of North America as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement:

All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by us at our jobsites at which we perform work in the District of Columbia and in Maryland within the District of Columbia metropolitan area; excluding

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employees at any jobsite who are jointly employed by us and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

WE WILL furnish to the Union in a timely manner the information requested by the Union on December 10, 2018.

D&H DEMOLITION, LLC

The Board's decision can be found at www.nlrb.gov/case/05-CA-233552 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.